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DORSEY & WHITNEY LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
4 EMBARCADERO CENTER  
SUITE 3400  
SAN FRANCISCO, CA 94111

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**OFFICE OF PETITIONS**

In re Application :  
Zentgraf et al. :  
Application No. 08/913,139 : DECISION ON PETITION  
Filed: February 9, 1998 :  
Atty Docket No. 8484-029-999 :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR § 1.137(b), "filed January 16, 2004.

The petition under § 1.137(b) is **DISMISSED AS MOOT**. No consideration under § 1.137(b) is necessary and none has been undertaken.

For the reasons set forth herein, the instant application is not abandoned. Further, this application was not considered abandoned on October 14, 2003, when continuation application No. 10/686,355 was filed.

The following prosecution history is relevant to this decision:

- On October 21, 2002, the Office mailed a final Office action in the above-identified application.
- On March 14, 2003, applicants replied with an amendment and a Notice of Appeal (and fee). This reply was made timely by an accompanying petition (and fee) for an extension of time for response within the second month.
- By Advisory Action mailed April 14, 2003, applicants were advised that the amendment filed March 14, 2003 did not place the application in condition for allowance.
- The period provided in 37 CFR 1.192(a) for filing an appeal brief (and fee) expired without the filing of an appeal brief or fee.
- On October 14, 2003, applicants filed continuation application No. 10/686,355.

- On January 9, 2004, the Office issued a Notice of Allowance and Fee(s) Due in the instant application.
- On January 16, 2004, applicants filed the instant petition under § 1.137(b) (and fee at small entity rate), along with a petition for extension of time under § 1.136(a) (and fee).
- On April 6, 2004, applicants transmitted the Issue Fee (at the large entity rate).

In essence, applicants filed the instant petition to clarify the status of this application and to determine the basis in the rules for co-pendency to have been maintained between the instant application and continuation application No. 10/686,355 filed October 14, 2003. No notice of abandonment was ever mailed in this application. However, applicants did fail to file an appeal brief within the period provided in 37 CFR 1.192(a).

Petitioner's attention is directed to 37 CFR § 1.192(b) which provides that:

On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

MPEP 1215.04 further clarifies the status of an application upon failure to file an appeal brief, as follows:

If no brief is filed within the time prescribed by 37 CFR 1.192, the appeal stands dismissed by operation of the rule. ... If no claims stand allowed, an application is considered as abandoned on the date the brief was due. If claims stand allowed in an application, the failure to file a brief and consequent dismissal of the appeal is to be treated as a withdrawal of the appeal and of any claim not standing allowed. The application should be passed to issue forthwith. Unless appellant specifically withdraws the appeal as to rejected claims, the appeal should not be dismissed until the extended period (5 months under 37 CFR 1.136(a)) to file the brief has expired.

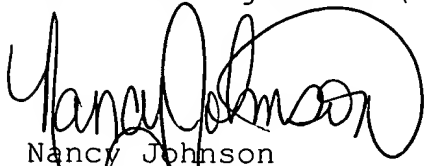
Applications having no allowed claims will be abandoned. Claims which are allowable except for their dependency from rejected claims will be treated as if they were rejected.

In the instant case, claim 4 is allowed. Claim 4 does not depend from rejected claims 1-3. See Final Office action mailed October 21, 2002; Advisory Action mailed April 14, 2003. Accordingly, upon dismissal of the appeal, the examiner properly issued the application with claim 4 only.

Since consideration of the petition under § 1.137(b) was unnecessary, the petition fee of \$665 is being refunded to Deposit Account No. 50-2319, as authorized. Likewise, there is no need for the extension of time for response under § 1.136(a) filed January 16, 2004. The extension fee of \$1002 is also being refunded to Deposit Account No. 50-2319.

Pursuant to the Notice of Allowance mailed January 9, 2004, the application file is being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions